IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.590 OF 2000

Shri Manik Sahadu Borshe
Ex-Head Booking Clerk, Titwala,
Central Railway and residing at
Shivshakthi Colony, O.T. Section,
Ulhasnagar, Dist. Thane. ...Petitioner.

V/s

1. Union of India
Through General Manager,
Central Railway, C.S.T.
Mumbai - 400 001.

2. Sr. Divisional Commercial
Supt. Central Railway, C.S.T.,
Mumbai - 400 001.

3. Divisional Commercial
Superintendent (l),
Central Railway, C.S.T.,
Mumbai - 400 001. ...Respondent.

Shri L.M. Nerlekar, advocate with Shri Rahul L. Nerlekar, advocate for the petitioner.

Shri Suresh Kumar, advocate for respondent Nos. 1 to 3 - UOI.

CORAM: V.G. PALSHIKAR &
V.M. KANADE, JJ.

DATE :

ORAL JUDGMENT:

1. Petitioner is challenging the Order passed by the Central Administrative Tribunal (For short "CAT") whereby his application was dismissed and the order of termination was confirmed.

2. Brief facts are as under :-

3. Petitioner was working as Head Booking Clerk at Titwala Railway Station, Central Railway. Between the period from 1/09/1989 to 10/09/1989, there was a short remittance of Rs 61,532/-, as a result of which Petitioner was suspended on 14/09/1989. The Charge Sheet was issued on 20/11/1989. The allegation in the Charge Sheet against the petitioner was that he did not deposit the amount as required under the rules and, therefore, there was short remittance of the said amount. An inquiry was conducted against the petitioner by the Enquiry Officer who examined 7 witnesses. Two statements of the Petitioner dated 11/09/1989 and 16/09/1989 which were recorded earlier were also brought on record. The Disciplinary Authority accepted the report and held that the charges were proved and imposed penalty of dismissal from service upon the petitioner. The Appellate Authority before whom the appeal was preferred dismissed the appeal and confirmed the order of the Disciplinary Authority. Petitioner preferred an Original Application before the CAT, which also was rejected.

The CAT relied upon two letters which were written by the petitioner in response to the memo received from the higher official. The CAT came to the conclusion that two letters clearly showed the admission of the petitioner that he was responsible and it was due to unavoidable circumstances there was a short remittance though he wanted to remit the amount as per the rules.

4. A Criminal Case was also instituted against the petitioner. However, the said Criminal Case was dismissed. The CAT came to the conclusion that the two letters which were written by the petitioner were not placed before the Criminal Court and that this evidence was not available to the Criminal Court.

SUBMISSIONS:

5. The learned Counsel appearing on behalf of the petitioner, inter alia, contended that the order of dismissal was disproportionate to the charge which was levelled against the petitioner. He submitted that the CAT had relied on the two letters which were sent by the petitioner after he had received the memo from the higher official. He submitted that the CAT had not interpreted the said letters in its proper perspective

and had wrongly come to the conclusion that the petitioner had admitted the guilt and misconduct which was levelled against him. The learned Counsel further submitted that the witnesses in the disciplinary inquiry case and the criminal case were common and that was the only material which was available against the petitioner. He submitted that the criminal case having been dismissed, the petitioner could not have been punished in the disciplinary inquiry case.

6. The learned Counsel appearing on behalf of the respondents vehemently opposed the submissions made by the learned Counsel appearing on behalf of the petitioner. He submitted that the cogent reasons were given by the CAT. He submitted that there was no reason to interfere with the said order as there was no jurisdictional error and the finding of the CAT was based on cogent reasons which were given by the CAT.

FINDINGS:

7. In the present case, it is an admitted position that the evidence before the Disciplinary Authority and the Trial Court in criminal case was identical and the petitioner, admittedly, had been acquitted in the

criminal case. There are many decisions on the question as to the effect of the judgment in the criminal case in the disciplinary proceedings. The Apex Court in the case of Paul Anthony reported in 1999(1) SC SLJ 429 has held that parallel proceedings can be initiated against the employee in criminal case and disciplinary inquiry case. The Apex Court in the said case came to the conclusion that when the charge against the employee is common in both, criminal case and disciplinary inquiry case and the material against him is the same and the accused has been acquitted from the criminal case then, in that case, he cannot be found guilty in the disciplinary inquiry case. Here, admittedly, the material against the petitioner was common in both, criminal case as well as disciplinary inquiry case. The CAT relied upon two letters which were written by the petitioner in response to the two memos which were received by him from the Office. The learned Counsel appearing on behalf of the petitioner has taken us through the judgment of the Trial Court from which it is clear that these two letters were also considered by the Trial Court. The CAT, in our view, appears to have come to the conclusion that these two letters were not available before the Trial Court in criminal case and it further held that in view of the

admission of the petitioner in these two letters, the charges against him were duly proved. It is pertinent to note the contents of the said two letters. The letter dated 11/09/1989 reads as follows:-

> "I have received your memo about the short remittance in the cash. I am in guilty but please give me the time up to 20.10.1989 for arranging money, definitely I will clear the full amount before 20.10.1989. I am bound for my words".

The contents of the letter dated 16/09/1989 reads as follows:-

> "R/Sir,
>
> Sub: Explanation vide memo dated 10.9.1989 as Regards the short accounted Rs. 61496/-.
>
> I agreed to accept that the said amount was short accounted during the period from 1.9.1989 to 10.9.1989 while working on season ticket counter

during 6/14 hours duty, due to unavoidable circumstance. I also assure that the above amount shown outstanding against me will be cleared up to 20.10.1989. I may be excused. Thanking you in anticipation.

Yours faithfully,

Sd/-

(M.S. Borse)"

8. In our view, it cannot be said that this is an admission on the part of the petitioner of having accepted the charge against him. The tenor of both these letters indicate that the petitioner has accepted the fact that there was a short remittance. He has tried to give his explanation in the second letter that due to unavoidable circumstances, he could not pay the amount in time as he was working on the Season Ticket Counter. From these two letters, it cannot be inferred that the petitioner had accepted the charge of misappropriation against him and at the best it can be said that he has accepted that there was a short remittance of the said amount. The CAT, in our view, has, therefore, clearly erred in relying upon these letters and dismissing the Original Application of the

petitioner. There is material to show that these letters were on record before the Criminal Court and the same were considered while acquitting the petitioner from the said charges. However, since there is concurrent fining which is given by the Enquiry Officer and which is confirmed by the Appellate Authority and the CAT, we do not wish to interfere with the said findings which are recorded against the petitioner. However, we feel that the punishment which is awarded to the petitioner is totally disproportionate. Ordinarily, this Court, while exercising its jurisdiction under Article 226 of the Constitution of India does not interfere with the punishment which is awarded by the Disciplinary Authority and which is confirmed by the Appellate Authority. However, in the present case, we are of the view that the punishment awarded is totally disproportionate. Petitioner has been acquitted in the criminal case. The two letters on which the reliance is placed by the CAT indicate that the petitioner had accepted that there was short remittance. However, it cannot be said that he had accepted the charge against him of misappropriating the said amount. In the statement which was recorded before the Enquiry Officer, the petitioner has categorically stated that

the money was siphoned of by the Station Master and the Booking Supervisor and when he had refused to make the payment, the case was filed against him. He has further stated that the Booking Supervisor and Station Master had collected Rs 10,000/- and had deposited the same on his behalf. He had further stated that the Station Master and Booking Supervisor had promised to remit the entire amount on his behalf. Further, from the record, it appears that the petitioner was continuously given first shift i.e. from 6.00 hours to 14.00 hours and the daily collection was required to be deposited with the Station Master. There are important admissions of witnesses who have stated that the Station Master and the Booking Supervisor were indulging in gambling and drinking in the Station Master Room during the day and neight. This evidence has been totally overlooked by the Enquiry Officer and the Disciplinary Authority. In view of all these circumstances, we are of the view that the punishment of dismissal from service is totally disproportionate to the charge which is levelled against him. The said order of dismissal is, therefore, set aside. The findings, however, are not disturbed. Petitioner is directed to be reinstated in service without payment of back-wages. Petitioner, however, will be entitled for

getting the benefit of continuity of service.

9. Writ Petition is accordingly allowed in the above terms with no order as to costs.

V.G. PALSHIKAR, J.

V.M. KANADE, J.